IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL APPEAL NO.167 OF 2002.

Chandru ... Appellant

-Vs-

State, by
The Assistant Commissioner of Police,
Saidapet Circle,
Chennai-600 015. ... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C. for the as stated therein.

For appellant : Mr.V.Gopinath,
senior counsel for
Mr.K.Srinivasan

For respondent : Mr.O.Srinath,
Govt.Advocate (Crl.side)

:JUDGMENT
This Criminal Appeal is directed against the conviction and sentence passed against the appellant/A.1 by the Court of II Fast Track Sessions Judge, Chennai as per the judgment dated 5.2.2002 rendered in Sessions Case No.302 of 2001.

2. Tracing the history of the above criminal appeal coming to be preferred by the appellant, what comes to be known is that a case in Sessions Case No.302 of 2001 has been registered by the respondent against the appellant and his mother for offences punishable under Sections 304-B and 498-A IPC on allegations such as that the marriage between the first accused, the appellant herein, and the deceased Parvathi was solemnized in the year 1995; that thereafter both the appellant and his mother, the second accused before the Court of Sessions, started harassing the said Parvathi demanding dowry and without being able to bear with the dowry harassment and torture, the said Parvathi, the wife of the appellant, committed suicide by hanging on 9.4.1999 at 4.30 p.m. at D.No.2, Jeevanandan Street, K.K.Nagar, Chennai and hence the charge against both the accused under the provisions of the IPC, extracted supra.

3. During trial, the respondent/prosecution whose duty it was to prove the said charge beyond all reasonable doubts, as it is the standard of proof fixed by law, in discharge of the burden cast on it, has examined eleven witnesses for oral evidence as P.Ws.1 to 11. P.Ws.1 and 2 are the brothers of the deceased, P.W.3 is the sister-in-law of the appellant/first accused, P.W.4 is the sister's son of the first accused, P.W.5 was the Tahsildar, Mambalam, P.Ws.6 and 7 are the mahazar witnesses, P.W.8 is the Post Mortem Doctor, P.W.9 is the Grade-I Constable, who was in-charge of the body of the deceased for post mortem, P.W.10 is the Inspector of Police who registered the complaint and FIR and P.W.11 is the Assistant Commissioner of Police and the Investigating Officer.

4. Besides the examination of the above witnesses for oral evidence, eight documents and one material object would also be marked as Exs.P.1 to P.8 and M.O.1 respectively, Ex.P.1 being the complaint dated 1 1.12.2001, Ex.P.2 dated 12.12.2001 is the statement of P.W.3 before the Tahsildar, Exs.P.3 and P.4 respectively dated 12.12.2001 and 19.12 .2001 being the post mortem certificates, Exs.P.5 to P.8 all dated 19 .12.2001 being respectively the FIR, the sketch, the observation mahazar and the seizure mahazar. The sole material object M.O.1 is the cream colour saree recovered from the body of the deceased.

5. With these evidence placed on record, the trial Judge, having framed certain points which surfaced for consideration, such as (1) whether the deceased died within seven years of the marriage? (2) whether the deceased died in an unnatural manner? and (3) whether the death of the deceased had occurred on account of the dowry harassment and torture?, and having appreciated the evidence in the context of the facts and circumstances of the case, has ultimately arrived at the conclusion to hold that the prosecution has proved the case against the first accused/the appellant herein for the offences punishable under Sections 304-B and 498-A IPC thereby awarding a sentence of rigorous imprisonment for seven years and a fine of Rs.5,000/=, in default to undergo a further rigorous imprisonment for six months for the commission of the offence held proved under Section 304-B IPC and for the offence under Section 498-A IPC, inflicting a sentence of rigorous imprisonment for one year and a fine of Rs.5,000/=, in default to undergo a further rigorous imprisonment for three months and the sentences to run concurrently and acquitting the second accused therein, holding that the prosecution has failed to prove its case against the second accused.

6. It is only against this judgment of conviction and sentence passed by the Court of II Fast Track Sessions Judge, Chennai, the first accused has preferred the above criminal appeal on grounds such as (i) that the learned Judge has failed to note that P.Ws.1 and 2 have alleged that the accused demanded Rs.20,000/= as dowry and the same was given by P.W.1 by obtaining loan from a finance company without any documentary evidence produced in proof of the same; (ii) that the learned Judge failed to note that even after the death of the deceased, the relationship was cordial in between the two families and the death was only a mere suicide and not a dowry death; (iii) that the prosecution has failed to prove as to what had happened in between 4.4.1999 and 9.4.1999; (iv) that the presumption of the learned Judge under Section 113-B of the Evidence Act is wrong; (v)that the learned Sessions Judge

has failed to note that a case of suicide has been converted to that of a dowry death; (vi) that no independent witnesses have been examined by the prosecution though they were available, which is fatal to the case of the prosecution.

7. Assessing the case of the prosecution in evidence, P.W.1, the elder brother of the deceased would depose that he is married and has two female children; that his younger sister was married to the first accused adorned with jewels weighing 20 sovereigns and with a cash of Rs.10,000/=; that after the marriage, the appellant had pledged all the jewels in the name of the purchase of an autorickshaw but he spent all the money taking drinks and thereafter started pestering the deceased by demand of dowry to get Rs.20,000/= lest she could not come and live with him; that his younger brother Vadivel obtained a loan of Rs.20,000/= from finance and gave it to his sister and even thereafter the appellant started torturing the deceased and under the guise of intoxication, which she used to complain to the witness; that thereafter he demanded Rs.1 lakh for the purchase of a lorry and since the same was not given, he started torturing her; that the elder members of the family, on 4.4.1999 went and consoled them; that on a Friday, at about 5.30 p.m., when he was at home, a boy came and informed him that his sister died of hanging; that himself, his step-mother and his wife rushed to his sister's house and saw the body of his sister; that the first accused had illicit connection with another lady at M.G.R.Nagar; that the second accused also hearing the words of the first accused started harassing the deceased; that he lodged the complaint with the police. P.W.2, the brother of of P.W.1 would also adduce evidence adhering to that of P.W.1.

8. P.W.3, the sister-in-law of the first accused would depose that the marriage was an arranged one by elder members of both families; that after the marriage, the first accused had a separate residence of his own along with his wife and they had a female child also now aged about 5 years; that the first accused is her brother-in-law and the second accused is his mother and she knows nothing about the first accused since he was living separately; that the deceased Parvathi was also not in the habit of talking to anyone freely; that on the date of occurrence, her brother-in-law having knocked at the doors since it was not open, she went and opened the door and saw the deceased hanging; that they untied the knot and removed Parvathi to the Hospital where she was pronounced dead and that they sent information to her parental home.

9. P.W.4 is the nephew of the first accused and this witness besides giving his relationship with parties, particularly the accused and his family, would also depose to the effect that the first accused was living as a separate family running an auto; that he did not know his habits since he was not in the habit of paying visit to their house; that on 9.4.1999, at the place of occurrence, his uncle Shankar was crying; that himself, the said Shankar and Valli joining together, opened the door and he saw inside the deceased hanging; that the said Shankar lifted the deceased and untied the knot and she was taken to the Hospital where she was pronounced dead; that the deceased hanged herself with the help of the saree.

10. P.W.5 is Tahsildar of Mambalam having jurisdiction over the place of occurrence and this witness would depose that from R.7 Police Station, the case in Cr.No.665/1999 was brought up for his enquiry regarding the suicide by hanging of one Parvathi, w/o.Chandru on 9.4.1999 ; that having obtained the FIR on 10.4.1999, he referred the body for Post Mortem and conducted the inquest in the presence of the panchayatdars and prepared inquest report and forwarded the same to the District Collector; that the statements of the panchayatdars and relatives of the deceased recorded are Ex.P.2.

11. P.W.6 would depose that he was an auto driver and that he did not know anything about the occurrence, but the police sent for him and asked him to put his signatures in some papers and that he did it and he did not know who were the accused and that the signatures found in the observation mahazar and recovery mahazar are not that of his and that he was not examined by the police, as a result of which this witness was treated hostile by the prosecution.

12. P.W.7 in his deposition would also say that he was an auto driver; that he did not know who were the accused nor did he know about the occurrence; that the police got his signature previously and the date and time he did not know; that he was not shown any sketch or observation mahazar and would deny the signatures found in the observation mahazar and the recovery mahazar resulting in this witness also being treated as hostile.

13. P.W.8 is the Post Mortem Doctor attached to Royapettah Hospital and this witness would depose that on 10.4.1999 when he was on duty, on the request of the Tahsildar, the body of a female viz. Parvathi aged 25 years was referred through Grade-I Constable Varadan and on the same day at about 2.00 p.m., he conducted autopsy on the body of the deceased and noted the following injuries:
"On front of the neck, the ligature mark was 7 cm. above the suprasternal notch and 3 cm. in breadth. On right side,the ligature mark was 1 cm. below the angle of the mandible and 2 cm. in breadth. On left side of the neck, the ligature mark was 5 cm. below the left mastoid process and 4 cm. in breadth. On dissection, the underlying tissues of the ligature mark were found pale and dry.
No other injuries are seen over the body except the ligature mark.
FINGER NAILS were deep blue in colour.
HYOID BONE was intact.
LUNGS were congested.
HEART was normal and its chambers contained fluid blood.
STOMACH contained 150 gms. of brownish-yellow semi solid of partly digested cooked rice particles. Mucosa was congested.
BLADDER was empty.
UTERUS was empty
BRAIN's surface vessels were congested.
All other internal organs were found congested.
VISCERA were preserved for chemical analysis.
OPINION: The deceased would appear to have "DIED OF ASPHYXIA DUE TO HANGING"
The certificate issued by this witness would be marked as Ex.P.4.

14. P.W.9 is the Grade-I Constable who was in-charge of the body of the deceased and he would depose that he entrusted the dead body of the deceased with P.W.8 along with the requisition at Royapettah Government Hospital and on the next date, i.e. on 10.4.1999, after the post mortem was over, he entrusted the body with the elder brother of the deceased and gave the report to the Sub Inspector of Police.

15. P.W.10 is the Inspector of Police of R.7 K.K.Nagar Police Station on 9.4.1999 serving as the Inspector of Police, Law and Order and this witness would depose that on 9.4.1999 one Sundaramurthy, aged 36, son of Ganesan came and lodged Ex.P.1 complaint, on receipt of which, at 8.45 p.m. that day, he registered the case in Cr.No.665/1999 under Section 304-B IPC and sent the original FIR to the Court along with the complaint; that he went to the spot and in the presence of the mahazar witnesses, he prepared the observation mahazar and the rough sketch respectively in Exs.P.6 and P.7; that around 11.00 p.m., he recovered M.O.1 saree under the cover of Ex.P.8 mahazar; that the deceased got married 5 years back and therefore for further investigation, he referred the matter to the Assistant Commissioner of Police, Saidapet, L&O along with a tapal; that day, he examined witnesses Sundaramurthy, Vadivelu, Annamalai, Dhanalakshmi, Maragatham, Valli, Mariyamall, Karthik, Sankar, Rakesh and Sardar Khan and then on 10.4.1999, he arrested both the accused and produced them before the Court of XXIII Metropolitan Magistrate, Saidapet, Chennai, who remanded the accused to judicial custody and that he assisted the Assistant Commissioner of Police, Saidapet in his investigation. This witness would also depose that he sent the body for post mortem along with the constable.

16. P.W.11, the Assistant Commissioner of Police, Saidapet, L&O and Investigating Officer in the above case would depose that on 12.4.199 9, on receipt of the FIR from the Inspector of Police R7 K.K.Nagar Police Station in Cr.No.665/1999 along with the materials collected and the preliminary investigation done by the said Inspector/P.W.10 as on 9.4.1999 and on receipt of the same, since the witnesses Sundaramurthy and witnesses Vadivel, Annamalai, Dhanalakshmi, Maragatham, Valli, Mariyappan, Karthik, Sankar, Ramesh and Sardar Khan were already examined by the Inspector of Police, he did not examine them again; that he examined the Doctor who conducted the autopsy on the body of the deceased and recorded his statement and on receipt of the post mortem certificate and on completion of the investigation, he filed the charge-sheet before the Court of XXIII Metropolitan Magistrate, Egmore, Chennai on 20.8.1999.

17. So far as the cross-examination of these witnesses are concerned, the defence would only point out that in the cross-examination of P.W.10, the witnesses examined by him have told him that the deceased was susceptible to yield to anger suddenly being short tempered and also P.W.5 would depose in his enquiry that witness Valli in her statement has stated that the accused did not ask for any jewel or money at the time of marriage and also P.W.1 stated before him that there was no possibility for his sister to commit suicide and there was no injury on the body at all and the said statement has been approved by witnesses Vadivel and Dhanalakshmi. All other cross-examinations are only formal and the defence does not seem to have

scored any major advantage.

18. The trial Court, as already stated, framing its own points for consideration and having regard to the materials placed on record has gone into all the aspects of the case as revealed in the pleadings by the prosecution and in the evidence through witnesses and documents and so far as the second accused is concerned, the lower Court would find absolutely no evidence coming forth particularly in view of the admitted fact that the first accused and the deceased were living as a separate unit and family away from others on their own and therefore there is no possibility on the part of the second accused, the mother-in-law of the deceased, to have acted in the manner as it has been alleged on the part of the complainant and therefore the trial Court has reason to arrive at the easy conclusion to hold that so far as the second accused in the case is concerned and that the prosecution has not proved the case beyond all reasonable doubts.

19. During arguments, the learned counsel appearing on behalf of the appellant in his crisp arguments, besides tracing the case of the prosecution as it has been framed, the evidence let in and the punishment meted out by the trial Court, would submit that there is no dispute that the marriage in between the appellant and the deceased was solemnized in the year 1995 in an arranged manner; that there is no allegation of demand of dowry but only allegation of torture; that P.Ws.3 and 4 do not at all support the case of the prosecution; that excepting P.Ws.1 and 2 who are none other than the elder brothers of the deceased, there is absolutely no evidence to support the case of the prosecution nor even the mahazar witnesses have spoken anything regarding attesting the observation mahazar and the recovery mahazar, but in these circumstances, the lower Court has arrived at the conclusion to hold that the appellant has committed the offences punishable both under Sections 304-B and 498-A IPC; that in the inquest report, even P.Ws.1 and 2 have not spoken anything regarding the dowry demand or torture; that this is not a case for conviction to be passed for Section 304-B IPC and would also cite two judgments in support of his arguments, the first one in SHAM LAL ETC. vs. STATE OF HARYANA ETC. reported in 1997(1) Crimes 245 (SC) and the second one in RAMAIAH AND OTHERS vs. STATE BY KARAMBAKUDI POLICE STATION reported in 1999-1-L.W.( Crl.) 127. The learned counsel would end up his argument stating that there is no dowry demand or dowry harassment and the punishment meted out particularly under Section 304-B IPC is unsustainable in law.

20. So far as the first judgment cited above is concerned, the Honourable Apex Court has held:

"It is imperative for invoking legal presumption u/sec.113-B of Evidence Act to prove that "soon before her death" deceased was subjected to cruelty or harassment."

It is further held therein:

"The first premise stands established in this case that the death of Neelam Rani took place within seven years of her marriage though the precise date of her marriage is not in evidence. (It is admitted by both sides that her

marriage was in the year 1983). The second premise that death was caused by burns is a factum which has not been disputed even by the appellant himself. In order to establish the third ingredient that "soon before her death she was subjected to cruelty or harassment for or in connection with demand for dowry", a plea is made to resort to the legal presumption envisaged in Section 113-B of the Evidence Act...."

21. So far as the second judgment cited above is concerned, it was observed by a learned single Judge of this Court that "Coming to the charge under Section 304-B IPC, there was no material produced by the prosecution to show that soon before her death, the deceased Madhavi was subjected to cruelty or harassment by her husband or any relative of her husband for/or in connection with any demand for dowry. Admittedly, there was a panchayat held between the accused and the parents of the deceased in which both the parties have agreed that the demand fo the accused should be met by the parents of the deceased during Deepavali period. ... In the absence of any such evidence, it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act. That rule of evidence is prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband, as then it would be the burden of the accused to rebut the presumption. In the present case, the prosecution case proved that the death of Madhavi took place within seven years of her marriage. Similarly that her death was caused by consuming poisonous insecticide is also proved. But as far as the ingredient that soon

before her death she was subjected to cruelty or harassment for/or in connection with the demand for dowry, is lacking. Accordingly, the prosecution has failed to produce sufficient materials."

22. If the evidence in the case in hand is to be assessed from the background of the above judgments and the position of law regarding the presumption under Section 113-B of the Evidence Act, it is relevant to look for some independent corroboration for the evidence of P. Ws.1 and 2 who are the brothers of the deceased. Even though these witnesses would adduce evidence to the effect that on 4.4.1999, they held a panchayat and thereafter they sent back the deceased to her husband's residence and on Friday, i.e.on 9.4.1999, they got the message that she died of committing suicide by hanging, still, excepting this version of these witnesses, absolutely no evidence is coming forth from any quarter serving as the corroborative evidence either confirming the said evidence or to clarify that the panchayat was held only on account of the appellant/accused harassing her demanding dowry. Therefore, the cruelty by her husband/the appellant herein that was meted out to the deceased comes to be proved, as it is contemplated under Section 498-A IPC, as a result of which there might have been a panchayat or compromise and without being able to bear with the cruelty meted out to her, the deceased was driven to the point of committing suicide and therefore while this commission of the offence by the appellant under Section 498-A IPC could be held proved as it is required under the said Section, the ingredients of Section 304-B IPC either for demand or for torture of dowry or for inflicting such bodily injury or otherwise are missing in order to show that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her

husband in connection with the demand of dowry so as to brand the death of the deceased as dowry death within the meaning of Section 304-B IPC.

23. This Section since warrants specific proof of the factum of dowry demand and harassment just prior to the commission of suicide by the deceased and further since the sentence could also go up to life, with the sentence of not less than seven years, nothing wrong in Courts seeking the case to be established for the commission of the offence under this Section with strong evidence and since it is lacking in the case in hand, simply stating that there was a panchayat held on 4.4.1999 and compromising the matter, the deceased was sent back to her husband's place and then they got a message of her dying of suicide by hanging cannot be held to be an offence constituted for being punished under Section 304-B IPC and therefore while holding that a definite offence is committed on the part of the appellant towards the deceased so far as it is concerned with the offence contemplated under Section 498-A, still it has to be held that no such offence has been committed by the appellant under Section 304-B IPC as it has been wrongly concluded by the lower Court.

24. However, it is not out of context to remark that the sentence awarded for the offence of Section 304-B IPC is on the wrong since it is only the sentence of imprisonment that is prescribed by the Section with the minimum sentence of seven years but not with any fine whereas it is found in the judgment of the lower Court that besides awarding the minimum sentence of seven years, it has also inflicted the fine of Rs.5,000/=, which cannot be inflicted.

25. In short, it is held that the prosecution has failed to prove the case against the appellant/accused for the commission of offence under Section 304-B IPC, but has proved the other offence under Section 498-A IPC to the requirements of law and hence the sentence awarded by the trial Court under Section 304-B IPC is liable to be set aside while confirming the conviction and sentence passed for the commission of the offence under Section 498-A IPC.

In result,
(i)the above Criminal Appeal is allowed in part.
(ii)The appellant is found not guilty of the offence under Section 30 4-B IPC. Accordingly, the judgment dated 5.2.2002 rendered in Sessions Case No.302 of

2001 by the trial Court i.e. the Court of Second Fast Track Sessions Judge, Chennai thereby convicting and sentencing the appellant for the offence under Section 304-B IPC is hereby set aside.

(iii)The fine amount, if any paid by the appellant for the offence under Section 304-B IPC is ordered to be refunded to him forthwith.
(iv)The judgment dated 5.2.2002 rendered in Sessions Case No.302 of 2 001 by the trial Court i.e. the Court of Second Fast Track Sessions Judge, Chennai thereby convicting the appellant for the offence under Section 498-A IPC and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/= in default to undergo a further rigorous

imprisonment for a period of three months is hereby confirmed.

Index: Yes
Internet: Yes
Rao

To

1.The Assistant Commissioner of Police,
Saidapet Circle,
Chennai-600 015

2.The Presiding Officer,
The Second Fast Track Court,
Chennai.

3.The Superintendent,
Central Prison,
Vellore.

4.The Public Prosecutor,
High Court, Madras.

17.4.2003.

CRIMINAL APPEAL NO.167 OF 2002.
ADVANCE ORDER
In result,
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(ii)The appellant is found not guilty of the offence under Section 30 4-B IPC and accordingly, the judgment dated 5.2.2002 of the trial Court i.e. the Court of Second Fast Track Sessions Judge, Chennai in Sessions Case No.302 of 2001 thereby convicting and sentencing the appellant for the offence under Section 304-B IPC is hereby set aside.

(iii)The fine amount, if any paid by the appellant for the offence under Section 304-B IPC is ordered to be refunded to him forthwith.

(iv)The judgment dated 5.2.2002 of the trial Court i.e. the Court of Second Fast Track Sessions Judge, Chennai in Sessions Case No.302 of 2001 in so far as convicting the appellant for the offence under Section 498-A IPC and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/= in default to undergo a further rigorous imprisonment for a period of three months is hereby confirmed.

Rao
Advance Order in Crl.A.167/2001